

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LYNN MOSTOLLER, as Special Administrator  
of the Estate of Carlos Velazquez, Deceased,

Plaintiff,

v.

**1:22-cv-00687**

USAA LIFE INSURANCE COMPANY,

Defendant.

**NOTICE OF REMOVAL**

Defendant, USAA Life Insurance Company, hereby gives notice of the removal of this case from the Second Judicial District Court, County of Bernalillo, New Mexico to the United States District Court for the District of New Mexico on the basis of diversity jurisdiction. In support of this Notice of Removal, USAA Life states as follows:

**I. Background and Procedural Prerequisites for Removal**

Plaintiff Lynn Mostoller, as Special Administrator of the Estate of Carlos Velazquez, commenced this action in the Second Judicial District Court, County of Bernalillo, New Mexico, Case No. D-202-CV-2022-04549, on August 10, 2022 (the “State Court Action.”). A copy of the Complaint for Bad Faith, Breach of the Covenant of Good Faith and Fair Dealing, Breach of Contract, Violations of the New Mexico Unfair Claims Practices Act, and Negligent Misrepresentation and Acceptance of Service, which comprise the entirety of the state court file at this time, are attached as **Exhibit A**. USAA Life was served with the Complaint and Summons on August 18, 2022, the date on which it received the Complaint and Summons from the New Mexico Superintendent of Insurance. USAA Life’s Notice of Removal is timely given as it is filed within 30 days after service of process and within one year after commencement of this action. *See* U.S.C. § 1446(b)(2)(B)(c).

## **II. Diversity Jurisdiction Exists**

### **A. The Parties in this Action are Citizens of Different States.**

Based upon the allegations in the Petition, Plaintiff is domiciled in New Mexico, and is a citizen of the State of New Mexico within the meaning and intent of 28 U.S.C. § 1332. Plaintiff's Complaint ("Compl."), ¶ 1.

USAA Life is an insurance company organized and existing under the laws of the State of Texas, and has its principal place of business in San Antonio, Texas. Accordingly, USAA Life is a citizen of the State of Texas within the meaning and intent of 28 U.S.C. § 1332.

Pursuant to 28 U.S.C. §§ 1332 and 1441, there is complete diversity of citizenship between Plaintiff and USAA Life.

### **B. The Amount in Controversy Exceeds \$75,000.00.**

The amount in controversy for removal jurisdiction is determined normally by reference to allegations in the plaintiff's complaint. *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). Where the amount of damages is not included in the complaint, the Court looks to the substance and nature of the injuries and damages described in the pleadings. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882-83 (5th Cir. 2000).

Here, although Plaintiff does not allege a specific dollar amount for the damages supposedly suffered as a result of the events and circumstances alleged in the Complaint, Plaintiff's allegations plainly demonstrate that the total amount in controversy exceeds the sum of \$75,000. Plaintiff asserts that USAA Life improperly paid a \$250,000 life insurance death benefit and seeks recovery in relation to the death benefit, which Plaintiff contends was estate property. *See* Compl. ¶ 35, 37, 42. Plaintiff also seeks punitive damages, treble damages, and attorneys' fees which may

be considered in determining the amount in controversy.<sup>1</sup> Accordingly, Plaintiff's allegations plainly demonstrate that the total amount in controversy exceeds the sum of \$75,000.00, and this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

Given the complete diversity of the parties and an amount in controversy in excess of \$75,000.00, this Court has jurisdiction over the causes of action and claims asserted against USAA Life in the State Court Action pursuant to 28 U.S.C. § 1332, and this action is properly removable pursuant to 28 U.S.C. § 1441.

### **C. Propriety of Removal**

This Notice is being filed within 30 days after USAA Life's first receipt of a copy of the initial pleading setting forth the claim for relief upon which the action is based, as required by 28 U.S.C. § 1446(b).

Apart from the pleadings and process attached as Exhibit A, USAA Life has received no other process, pleadings, motions, or orders.

The United States District Court for the District of New Mexico is the federal judicial district embracing the Second Judicial District Court, County of Bernalillo, New Mexico, where this suit was originally filed. Venue is thus proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

USAA Life will promptly (a) file a true and correct copy of this Notice with the Clerk of the Second Judicial District Court, County of Bernalillo, New Mexico, in accordance with 28

---

<sup>1</sup> See *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998) (attorneys' fees should be included in calculating amount in controversy if plaintiff's claim is based on state law that permits an award of attorneys' fees); see also *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1247 (10th Cir. 2012) (punitive damages may be considered in determining the requisite jurisdictional amount).

U.S.C. § 1446(d), and (b) serve Plaintiff's counsel with a true and correct copy of this Notice of Removal, in accordance with 28 U.S.C. § 1446(d).

**CONCLUSION**

**WHEREFORE**, Defendant USAA Life Insurance Company respectfully removes this action from state court into this Court for trial and determination.

Respectfully submitted,

/s/ Amy B. Boyea  
Amy B. Boyea  
C. Summer Simmons\*  
MCDOWELL HETHERINGTON LLP  
1000 Ballpark Way, Suite 209  
Arlington, Texas 76011  
Telephone: (817) 635-7300  
[amy.boyea@mhllp.com](mailto:amy.boyea@mhllp.com)  
[summer.simmons@mhllp.com](mailto:summer.simmons@mhllp.com)  
*\*to be admitted pro hac vice*

Meena H. Allen  
ALLEN LAW FIRM, LLC  
6121 Indian School Road NE  
Suite 230  
Albuquerque, NM 87110  
Telephone: (505) 814-6908  
[mallen@mallen-law.com](mailto:mallen@mallen-law.com)

***Attorneys for Defendant USAA Life Insurance Company***

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2022, a true and correct copy of the foregoing was served on the following counsel of record via email and through CM/ECF:

David M. Houliston  
Law Offices of David M. Houliston  
7500 Jefferson Street NE, Suite 106  
Albuquerque, NM 87109

/s/ Meena H. Allen  
Meena H. Allen